

**UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

**TOUCHPOINT SUPPORT SERVICES,
LLC**

Employer,

and

**MICHIGAN COUNCIL 25, AMERICAN
FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES
(AFSCME), AFL-CIO**

Petitioner.

Case No. 07-RC-258867

EMPLOYER’S REQUEST FOR REVIEW

I. INTRODUCTION

Pursuant to Section 102.67 of the Rules and Regulations of the National Labor Relations Board (the “Board”), Touchpoint Support Services, LLC (“the Employer”), by and through its undersigned counsel, hereby submits this Request for Review of the Regional Director’s May 4, 2020 Decision and Direction of Election (“Decision”) as compelling reasons exist for the Board’s intervention.

As discussed below, the Regional Director initially abused her discretion by conducting a telephonic pre-election hearing¹ and then compounded that error by relying upon evidence beyond the hearing record to support her erroneous conclusion that only a mail ballot election is appropriate in light of the ongoing COVID-19 pandemic. In doing so, the Regional

¹ As discussed below, the Regional Director’s own April 9, 2020 Notice of Representation Hearing contemplated a “Skype” hearing which, while still procedurally and otherwise deficient, at least would have afforded the Parties a video format with attendant observational and other procedural safeguards and benefits. However, in lieu of an actual Skype (i.e. video) hearing, the Region ultimately conducted what amounted to a mere teleconference.

Director blatantly disregarded Board precedent respecting the limited use and inherent unreliability of mail ballots, and ignored record evidence demonstrating that a manual ballot election is perfectly feasible to accomplish because eligible voters are all reporting to the Employer's work site, and thus not scattered or otherwise not present for a manual ballot. The Regional Director also disregarded clear evidence of problems plaguing the United States mail in the Detroit metropolitan area, which is likely to compromise ballot delivery and return. Moreover, the Regional Director refused to reveal the Regional Office's plans to assure the safe (e.g. contamination-free) distribution of mail ballots to eligible voters, and failed to explain how the Region will track and date-stamp returned ballots and comply with Casehandling Manual and other established requirements in light of the fact that the Regional Office is closed.

As a result, in addition to the inherent lack of enforceable laboratory conditions recognized in pre-pandemic Board cases, the Employer has grave concerns that under current conditions, where the degree of risk of infection by mail cannot be quantified, mail ballots will be lost, left unattended outside residences, stolen, be perceived by voters as contaminated, sent to residences where voters who are working in a hospital temporarily are not living at home to protect their families, or will arrive after a Regional Director-imposed deadline, thereby disenfranchising voters or otherwise undermining the integrity of the election process. In sum, there are so many risks unanswered questions that mandating mail ballot election to proceed would be a miscarriage of justice.

The eligible voters are essential front line workers reporting to the workplace and interacting every day, and thus present for a manual vote. At its core, the Regional Director's mail ballot order is based upon a speculative and misguided desire to reduce the possibility that Regional staff will be exposed to COVID-19, at the expense of reliability as well as laboratory

conditions and overall workplace democracy. This type of ad hoc reordering of priorities is inconsistent with Board precedent, contrary to the Agency's mission, and antithetical to the salutary purposes of the National Labor Relations Act.

In a similar vein, the Region cannot have it both ways. In its April 1, 2020 memorandum allowing representation elections to resume, the Board noted that "conducting representation elections is core to the NLRB's mission...." However, the Board cannot permit elections to be scheduled following a "business as usual approach" by precluding manual ballot elections from being conducted. The Board's immediate guidance is necessary to create a uniform approach for Regional Directors to follow.

In fact, the instant case is remarkably similar to Atlas Pacific/Gulftech, No. 27-RC-258742, in which the Board recently granted the Employer's Emergency Motion to Stay the Election pending the Board's assessment of the Regional Director's decision to direct a mail ballot election over the employer's objection. For the reasons set forth herein as well as the Employer's Emergency Motion to Stay the Election, substantial questions of law and policy are raised because of the Regional Director's departure from officially reported Board precedent and fundamental disregard of the Board's mission and the goals of the Act. Therefore, the election in this case should be stayed pending the outcome of conclusive Board guidance concerning the appropriateness of a mail ballot election during the COVID-19 pandemic.

II. STATEMENT OF THE CASE AND SUMMARY OF EVIDENCE

A. Matters Prior To Pre-Election Hearing

On April 7, 2020, the Union filed a representation petition seeking to represent a unit comprised of a group of the Employer's employees working at Providence Hospital in Southfield, Michigan. (Board Exhibit 1(a)). On April 9, 2020, the Region issued a Notice of

Representation Hearing, scheduled for April 16, 2020, via Skype. (Board Exhibit 1(d)). On April 14, 2020, the Employer filed a Motion for An In-Person Hearing. (Board Exhibit 1(f)). On April 15, 2020, the Regional Director denied that motion based upon the Regional Office's mandatory work-at-home order and the State of Michigan's Stay at Home Order stemming from the COVID-19 pandemic. (Board Exhibit 1(g)).

B. The April 16, 2020 Pre-Election Hearing

In light of the Regional Director's decision to deny the Employer's Motion for An In-Person Hearing, the Union and Employer appeared for a telephonic hearing on April 16, 2020. Notably, although the hearing was originally scheduled to be held via Skype, which would have allowed for video-based interfacing, the Parties were advised the day before that the hearing would be held exclusively by telephone. During the April 16, 2020 hearing, the Employer noted that its participation in the hearing teleconference in no way waived its right to challenge the Regional Director's April 15, 2020 decision. (Tr. 12).

At the beginning of the hearing, the Hearing Officer noted that there were "no issues concerning representation to litigate" and that "[t]he parties agree that the sole issue presented in this matter are the details of the election, specifically the manner of election which oral arguments and offers of proof will be presented." (Tr. 18).

1. The Union's Position Concerning How The Election Should Be Conducted

The Union confirmed that it would only proceed in this case if a mail ballot election was directed. Specifically, the Hearing Officer asked the Union's representative the following question and he provided the ensuing answer:

THE HEARING OFFICER: All right. Thank you.

Mr. Thompson, second question for you. Does the Petitioner wish to go forward with an election if a manual election is directed by the Regional Director?

MR. THOMPSON: No.

THE HEARING OFFICER: Okay. To be clear, the Petitioner does not wish to move forward with an election if a manual election is directed by the Director. It sounds like I heard absolutely no is the answer to that. Asked and answered. I'll ensure that's noted for the record.

(Tr. 14).

During its initial presentation, the Union asserted that the election should be conducted via mail ballot, primarily for the Union representatives' safety. (Tr. 19).

2. The Employer's Position Concerning How The Election Should Be Conducted

The Employer asserted that the election should be conducted via manual ballot at the earliest suitable date. (Tr. 21). The Employer explained that a manual ballot election would be appropriate because the employees in the petitioned-for unit are working at a single site, and thus not widely scattered. (Tr. 22). Additionally, the Employer explained the many problems plaguing a mail ballot election, such as: (1) COVID-19 can live on the mail for an unspecified amount of time; (2) the uncertainty concerning the health of the Regional personnel who would be handling mail ballots issued to and received from eligible voters; (3) documented delays in the United States mail delivery in the Detroit metropolitan area; (4) employees within the petitioned-for unit possibly not residing at their homes for periods during the pandemic; and (5) how mail ballots would be tracked/logged upon their return to the Regional Office considering all Regional employees are working from home. (Tr. 22-23). On this last point, the Employer noted that the Board's Casehandling Manual requires that "all envelopes should be date stamped when received back by the Regional Office to establish the date of receipt." (Tr. 34). See also Casehandling Manual Section 11366.4(a)

Because the Parties were precluded from providing testimonial evidence during the April 16, 2020 hearing, the Employer introduced news articles to support its position as to why a mail ballot election is inappropriate under these circumstances. These articles are entitled:

- “Mail Delivery Skipping Days in Parts of Metro Detroit” (Employer Exhibit 2);
- “Is Pontiac Mail Center A Coronavirus ‘Hot Spot’?” (Employer Exhibit 3);
- “Lawsuit Seeks Revote Since Some Didn’t Get Absentee Ballots” (Employer Exhibit 4);
- “Mail Service Slows in Michigan As Coronavirus Hits Postal Workers (Employer Exhibit 5); and
- “Some Postal Workers Fear for Safety After Detroit Mail Carrier Dies From COVID-19” (Employer Exhibit 6).

The Employer also introduced a Board press release from November 15, 2001 describing an interruption to the Manhattan Regional office’s postal operations in the wake of the anthrax scare in the fall of 2001. (Employer Exhibit 7).

With respect to the mechanics of a manual ballot election, the Employer explained that there would be sufficient well-ventilated and clean space (allowing for proper social distancing measures to be practiced) for the election to be held at the employees’ work site, which, at all relevant times, has remained open. (Tr. 41-42, 45, 48). The Employer also noted that employees are presently working at the site and are not permitted to telework because they are cleaners at a hospital. (Tr. 43-44).

C. The Union’s Request To Reopen The Record

As noted above, during the April 16, 2020 hearing, the Union’s representative unequivocally stated on the record that the Union did not wish to participate in a manual ballot election should the Regional Director direct one in this case. Notably, the Union’s position during

the hearing was entirely consistent with the RC petition it filed on April 7, 2020. (Board Exhibit 1(a)). The Union noted in response to Questions 11(a) and (d) that it desired a mail ballot election. (Board Exhibit 1(a)).

Nevertheless, by letter dated April 17, 2020 (which was not served upon the undersigned until after the close of business on Monday April 20, 2020)², the Union changed its position for unspecified reasons. Specifically, the Union's letter stated, in pertinent part:

The Union, Michigan AFSCME Council 25, hereby gives written notice to reopen the record regarding the above case.

During the proceeding, it was stated on the record that the Petitioner *did not wish* to proceed with the petition if the RD directs a manual election. Please make the following change in the record to reflect that the Petitioner *does wish* to proceed with the petition should the RD direct a manual election.

(Emphasis in original).

On April 21, 2020, the Employer opposed this application, primarily on the grounds the Union failed to satisfy the requirements of Section 102.65 of the Board's Rules and Regulations. However, as discussed in detail infra, in the Decision, the Regional Director granted the Union's request to reopen the record.

D. The Employer's Request to Reopen The Record

On April 29, 2020, the Employer filed a motion to reopen the record in accordance with Section 102.65 of the Board's Rules and Regulations. The Employer sought to introduce evidence, received only after the April 16, 2020 hearing, demonstrating that it took more than three weeks for it to receive mail from the Regional office relating to the instant case. The Decision

² Despite this unexplained delay in service, the Region denied the Employer's request to submit a response by April 23, 2020. Instead, the Region set the response deadline for less than 24 hours after the delayed receipt of the Union's April 17, 2020 correspondence.

denied the Employer's motion to reopen the record to include this substantially-delayed correspondence mailed by the Region.

III. THE REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

On May 4, 2020, the Regional Director issued her Decision, directing a mail ballot election. Initially, the Regional Director noted that "there is no contention that the employees in question are scattered by location or schedule." (Decision, at 5). After summarizing public health concerns associated with COVID-19, the Regional Director then went on to consider matters that were not addressed at the April 16, 2020 hearing by the Parties or the Hearing Officer. First, the Regional Director noted that a manual ballot would result in potentially 84 interactions between voters, observers and the Board agent "against social distancing guidelines...." (Decision, at 5). Second, the Regional Director found that employees would "use the same voting booth, writing utensils and ballot box in the course of the election." (Decision, at 5). Third, the Regional Director explained that individuals would come into close contact with one another during the pre-election conference and ballot count in contravention of social distancing guidelines. (Decision, at 6). Fourth, the Regional Director postulated that it would not be "inconceivable that an employee who is not working due to illness, considered not working due to mild illness, or has self-quarantined due to exposure to someone who is ill, might report to work to avoid disenfranchisement in a manual election." (Decision, at 6). On this point, the Regional Director explained that "[b]esides generally offering a well-ventilated area that will allow for social distancing the Employer does not have any carefully considered plan for how a manual election could be conducted in the circumstances presented." (Decision, at 6). Based on these factors, none of which were discussed by the Parties during the April 16, 2020 hearing or raised by the Hearing Officer, the Regional

Director concluded a manual ballot posed “an unacceptable risk of exposure to the virus for voters, party representatives, and Board personnel.” (Decision, at 6).

The Regional Director then explained that a “mail ballot election has no apparent significant drawbacks” despite the Employer’s introduction of numerous news articles detailing problems with the United States mail in the Detroit metropolitan area. and proffers respecting the lack of a scientific consensus on the degree of risk posed by mailed materials. (Decision, at 6).³ The Regional Director also summarily dismissed potential health concerns associated with virus-infected mail by claiming that extending the deadline for ballots to be received would cure that problem. (Decision, at 6). The Regional Director also provided an *ipse dixit* explanation concerning how Regional personnel is “fully capable of conducting its business and handling mail” even though staff is working from home. (Decision, at 6).

Finally, the Regional Director ruled that delaying a manual election until one can be safely conducted was not feasible because “[t]here currently is no clear indication as to how widespread the virus will become or how long its effects will last; there is no end in sight at this time.” (Decision, at 6).

Notably, the Decision explains that a Request for Review is due May 18, 2020 (14 days after its issuance) rather than the customary 14 days following a final disposition by the Regional Director. (Decision, at 10).

IV. ARGUMENT

As discussed herein, the Regional Director erred by: (1) conducting a telephonic pre-election hearing; (2) granting the Union’s request to reopen the record; (3) denying the

³ As noted above, the Regional Director denied the Employer’s request to reopen the record to introduce evidence not available at the time of the hearing - unequivocally showing that it took nearly *three weeks* for it to receive a piece of United States mail from the Regional Office. (Decision, at 3).

Employer's request to reopen the record; (4) relying upon evidence that neither the Parties nor the Hearing Officer raised at the April 16, 2020 hearing; and (5) directing a mail ballot election when a manual ballot election is perfectly feasible to accomplish.

A. The Regional Director Improperly Directed A Skype, Then Telephonic Hearing

Nothing in the Act, the Board's Rules, nor any procedural manual supports conducting a representation case hearing in which none of the participants or witnesses are present in a single room. The absence of any support for this unprecedented procedure is not surprising. The very concept of a hearing conducted entirely by telephonic means is utterly alien to the Act. This is underscored by Board rule §102.64(b) which states that hearings shall be open to the public – a *de facto* impossibility in a hearing conducted through pre-arranged Skype (and ultimately telephonic) invitation, and operated through a network comprised of an unknown number of private computers and/or electronic devices. The fact that the Hearing Officer, court reporter, party representatives and counsel, were forced to *each* participate remotely – from separate locations – exponentially multiplied the practical and due process issues inherent in conducting a video, much less, a telephonic hearing.⁴

It is thus no surprise that, after the instant hearing was conducted, the Board stayed pre-election hearings scheduled to be conducted over Skype or telephone (including one scheduled by Region 7) given these inherent problems. See BASF Corporation, 07-RC-259428 (May 4, 2020); Morrison Healthcare, 12-RC-257857 (Apr. 29, 2020). Given that the Employer has been denied due process because it was compelled to participate in a telephonic pre-election hearing for

⁴ In the present case, the Regional Director found that the Employer had not proffered “any carefully considered plan for how a manual election could be conducted in the circumstances presented.” (Decision, at 6). This finding is entirely disingenuous because the Regional Director only permitted the Parties to present oral argument and offers of proof, not introduce testimonial evidence.

which there was no authority for the Regional Director to schedule in the first place, the mail ballot election should be stayed pending the outcome of the Employer's Request for Review.

B. The Regional Director Improperly Granted The Union's Application To Reopen The Record

During the April 16, 2020 hearing, the Union's representative stated on the record that the Union did not wish to participate in a manual ballot election should the Regional Director direct one in this case. (Tr. 14). However, inexplicably, the Union sought to change its position the next day. The Regional Director should have rejected the Union's application to re-open the record. Section 102.65(e)(1) governs motions to re-open the record following the close of a representation hearing. That provision states, with emphasis added:

(e)(1) A party to a proceeding may, **because of extraordinary circumstances**, move after the close of the hearing for reopening of the record, or move after the decision or report for reconsideration, for rehearing, or to reopen the record, but no such motion shall stay the time for filing a request for review of a decision or exceptions to a report. **No motion for reconsideration, for rehearing, or to reopen the record will be entertained by the Board or by any Regional Director or Hearing Officer with respect to any matter which could have been but was not raised pursuant to any other section of these Rules except that the Regional Director may treat a request for review of a decision or exceptions to a report as a motion for reconsideration.** A motion for reconsideration shall state with particularity the material error claimed and with respect to any finding of material fact shall specify the page of the record relied on for the motion. A motion for rehearing or to reopen the record shall specify briefly the error alleged to require a rehearing or hearing de novo, **the prejudice to the movant alleged to result from such error, the additional evidence sought to be adduced, why it was not presented previously, and what result it would require if adduced and credited. Only newly discovered evidence—evidence which has become available only since the close of the hearing—or evidence which the Regional Director or the Board believes should have been taken at the hearing will be taken at any further hearing.**

(Emphasis added).

In the present case, the Union's application did not point to any: (1) extraordinary circumstances warranting reopening the record; (2) prejudice the Union would suffer if the record

was not reopened; (3) why the Union suddenly wished to change its position concerning its willingness to participate in a manual ballot election; or (4) newly discovered evidence, to the extent any existed, which the Union would attempt to enter should the record be reopened.

Notably, in particular, the Union would not have been prejudiced had the Regional Director decided to direct a manual ballot election and dismiss the RC petition based upon the Union's initially-stated record position that it would not participate in a manual ballot election. Had the Regional Director properly directed a manual ballot election, and thus dismissed the RC petition, the Union could have re-filed another RC petition indicating that it would agree to proceed with a manual ballot election. Accordingly, the Regional Director erred in granting the Union's application to reopen the record and the Decision should be reversed.

C. The Regional Director Improperly Denied The Employer's Motion to Reopen The Record

As noted, on April 29, 2020, the Employer filed a motion to introduce newly-discovered evidence, unavailable to it at the time of the April 16, 2020 hearing, which shows that it took more than three weeks for the Employer to receive a correspondence via United States mail from the Region 7 Regional Office. This evidence directly supports the Employer's argument that the United States mail is simply too unreliable for the Region to consider conducting a mail ballot election. The Employer explained that the inability to present this evidence would prejudice the Employer from further advancing this argument, especially if the Union's earlier request to reopen the record was granted.

The Regional Director deemed this evidence as "unnecessary" despite the fact that it is directly probative of potential problems with the mail **emanating from the Regional office**. The Regional Director found that "allowing extra time for the sending and receiving ballots will allay those concerns..." but provided no further explanation to support this conclusion. (Decision,

at 3). This finding is especially problematic because even allowing extra time for ballots to be returned may still cause voters to be disenfranchised because their ballots may end up returned after the Region's self-imposed deadline through no fault of voters. Accordingly, the Regional Director erred in failing to grant the Employer's motion to reopen the record under these circumstances. Thus, the Decision should be reversed.

D. The Regional Director Improperly Considered Matters Outside The Record And Dispensed Her Own Brand Of Industrial Justice

The Regional Director also acted outside her authority by relying upon facts which are clearly erroneous and not derived from the hearing record. First, the Regional Director assumed, without any evidentiary support, that a manual ballot election would cause the participants to violate social distancing guidelines. (Decision, at 5). The Regional Director leapt to the conclusion that voters would have to use the same voting booth and writing utensils. (Decision, at 5). The Decision also concluded, without any basis, that participants at a pre-election conference or ballot count would not conform to appropriate social distancing parameters. (Decision, at 6). The Regional Director also postulated that it would not be "inconceivable" for an ill employee to fear disenfranchisement and thus, attend a manual ballot election, thereby exposing others to the virus. (Decision, at 6).

The Regional Director further explained the Employer "does not have any carefully considered plan for how a manual election could be conducted in the circumstances presented." (Decision, at 6). As noted above, that is an especially egregious finding given the format of the hearing. If the Regional Director was concerned about these issues, she could have solicited the Parties' positions before reaching her speculative conclusions. The Board's Rules and Regulations stipulate that a Regional Director's findings are subject to reversal if they are "clearly erroneous on the record." Because the Regional Director's conclusions went beyond the record, they fail to

satisfy even this minimal standard. As a result, the Decision should be reversed and the election stayed.

E. The Regional Director Disregarded Record Evidence Abused Her Discretion In Directing A Mail Ballot Election

As a matter of Board law, the Regional Director abused her discretion in directing a mail ballot election in this case. The Board, in San Diego Gas & Electric, 325 NLRB 1143 (1998), provided guidelines for the limited, specific circumstances in which the Regional Director should direct the use of mail ballots over manual ballots. 325 NLRB at 1145. It held a Regional Director should consider ordering the use of mail ballots where voters are unable to vote manually because of job duties or work schedules. The Board, however, interprets San Diego Gas & Electric to also require the Region to “consider the desires of all the parties.” Casehandling Manual, Part Two, “Representation Proceedings” at 11301.2. The present circumstances do not meet the Board’s own criteria for holding a mail ballot election. Moreover, San Diego Gas & Electric contemplates mail ballots when employees’ schedules or duties make a mail ballot appropriate, not in the circumstances present here.

It is well settled that manual elections afford employees the best opportunity to participate in the process. This concept was specifically identified by NLRB General Counsel Fred Feinstein who noted in a June 2, 1994 Memorandum to NLRB Chairman William B. Gould IV, that a study showed 87.9 percent of eligible voters participated in manual elections compared to 68.14 percent who participated in mail ballot elections. See San Diego Gas & Electric, 325 NLRB at 1151, n.4. Conversely, as noted, voter turnout in manual ballot elections is substantially higher. See Nouveau Elevator Indus., Inc., 326 NLRB 470, 471 (1998) (“[i]t is well know that voter turnout is considerably higher in manual as opposed to mail ballot elections, and maximizing voter turnout is a legitimate objective in all elections.”). Thus, it is clear that empirical data, longstanding

Board precedent and Board policy all support and demonstrate that manual ballot elections better effectuate the purposes of the Act. Specifically, manual ballot elections afford employees the greatest opportunity to express whether they wish to be represented by a union and participate in the collective bargaining process.

In fact, under these circumstances, mail ballots are likely to disenfranchise voters, increase unreliability the likelihood of error and confusion, and otherwise seriously undermine the integrity of the election process. The Board has invalidated the results of a mail ballot election when it found that mail-delivery procedures affected the outcome of an election. See Int'l Total Svcs., 272 NLRB 201 (1984). In fact, the Board has recognized the vagaries of the United States Mail through its promulgation of the “postmark rule” contained in Section 102.2(b) of its Rules and Regulations. Indeed, “mail ballot elections are more vulnerable to the destruction of laboratory conditions than are manual ballots because of the absence of direct Board supervision over the employees’ voting.” Thompson Roofing, Inc., 291 NLRB 743, n. 1 (1988).

As noted above, election procedures that rely on United States mail to timely deliver the ballots of eligible voters to the Regional office are unreliable even in normal circumstances. The present circumstances are nowhere near normal. According to the news reports introduced during the April 16, 2020 hearing, mail has not timely reached its intended recipients. In fact, although the Regional Director refused to reopen the record to permit introduction of newly-discovered/newly-available evidence, a piece of mail from the Regional office took more than three weeks to reach the Employer.

The present unreliability of mail balloting is compounded by logistical problems and unavailability of procedural safeguards. The Board has not announced procedures for producing and mailing mail ballots, given the Board’s agency-wide staff telecommuting directive.

The Decision does not explain how the Region will keep track of returned ballots, particularly if the Regional Office remains closed. As a result, the Region has not established how it will comply with Section 11336.4(a) of the Casehandling Manual, which states, in pertinent part, “[a]ll envelopes should be date stamped when received back by the Regional Office to establish the date of receipt.”

Accordingly, there is a strong chance that employees will be disenfranchised because their ballots may not be timely delivered or never received, and thus never counted. The strong likelihood of misdirected and unreceived mail makes clear that holding a mail ballot election would violate the *fundamental* Board policy of affording employees the broadest possible participation in Board elections. Kerrville Bus Co., 257 NLRB 176, 177 (1981).

In addition to undermining the integrity of the election, holding a mail ballot election under these circumstances may lead to the tragic result of spreading COVID-19 further, including to potential voters. There are several cases of postal service workers testing positive for COVID-19 in the Detroit metro area, and there is evidence the virus can survive on surfaces like cardboard or paper for 24 hours or longer. There is no consensus among the scientific community about the exact degree of risk. No one knows. Many people are “quarantining” their mail by leaving it in their mailboxes or outside their residences unattended for several days. The process of holding a mail ballot election is fraught with uncertainty, potential irregularities, and risk for all involved. And, most importantly, the Decision fails to provide any guidance as to how these concerns will be addressed other than to extend the deadline for the receipt of ballots by an arbitrary amount of time. This kind of “we will figure it out” approach simply does not satisfy due process considerations.

As demonstrated above, there was simply no basis, particularly considering the extraordinary circumstances the Parties find themselves, for the Region to mandate a mail ballot election in this matter. Due to the unprecedented disruptions caused by the COVID-19 pandemic and considering the catastrophic impact the COVID-19 pandemic continues to have on the petitioned-for employees and everyone in the Detroit metro area, the Board should not endorse the Regional Director's Decision to force a mail ballot election.

The manual ballot election is one of the hallmark features of workplace democracy in the United States. It should not simply be brushed aside without due consideration. Accordingly, for the reasons set forth herein, as well as the Employer's Emergency Motion to Stay The Election, the election should be stayed, the Employer's Request for Review should be granted, and the Decision should be reversed.

CONCLUSION

For the foregoing reasons, the Board should grant the Employer's Request for Review and summarily stay the election.

Respectfully submitted,

JACKSON LEWIS P.C.
Thomas Piekara
Daniel Schudroff
Christopher Repole

/s Daniel Schudroff
Daniel Schudroff

ATTORNEYS FOR TOUCHPOINT SUPPORT SERVICES, LLC
Dated: May 7, 2020

CERTIFICATE OF SERVICE

I hereby certify that, on May 7, 2020, I caused a true and correct copy of the foregoing Request for Review to be served upon Petitioner MICHIGAN COUNCIL 25, AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES (AFSCME), AFL-CIO through its representative, Reno Thompson, via e-mail, at the following address of record: rthompson@miafscme.org. I also certify that I filed this document with the Executive Secretary through the Board's E-Filing system.

/s Daniel D. Schudroff
Daniel D. Schudroff

4829-5266-6555, v. 2